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Letter dated 18 December 2003 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

The Governing Council of the United Nations Compensation Commission has concluded its fiftieth session, which was held in Geneva from 16 to 18 December 2003.

During the opening plenary meeting of the fiftieth session, representatives of Kuwait, the Islamic Republic of Iran, Jordan, the Philippines and Saudi Arabia addressed the Council. Their statements are being sent by mail with the original of this letter.

During the session the Council considered six reports and recommendations made by the Panels of Commissioners in the D, E1, E2, E3 and F4 categories of claims, and the first instalment of Palestinian category C late claims. The report on category D claims is concerned with the review of individual claims for damages above $100,000; the report on category E1 claims is concerned with the review of oil sector claims; the report on category E2 claims is concerned with the review of claims filed on behalf of non-Kuwaiti corporations and other business entities; the report on category E3 claims is concerned with the review of non-Kuwaiti construction and engineering claims; the report on category F4 claims is concerned with the review of environmental claims; and the report on Palestinian claims is concerned with the review of individual claims for damages up to $100,000. The attached tables provide details of the amounts of compensation claimed in the reports and the amounts awarded by the Governing Council (see annex I). The total amount awarded in all of the reports approved at the fiftieth session is $1,408,966,401.

The Governing Council considered the report of the Executive Secretary: summary of activities, covering the period from 1 August to 31 October 2003. The report covers the processing of claims, the withdrawal of claims and the payment of approved claims. Annexed to it is the 2003 progress report on the Compensation Commission work programme for the period 1997-2003.

The Council discussed the arrangements for ensuring that payments are made into the Compensation Fund in the light of information provided by the secretariat. The Council took note of the information, requested the secretariat to provide further information on this issue as it becomes available and will keep the matter on its agenda.

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The Council discussed several issues relating to the processing and payment of claims, including the twenty-fourth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure, and approved corrections to certain category A, C and D claims.

The Council considered the issue of duplication of awards and recommended that the matter be kept on its agenda. The Council also continued its consideration of an archiving policy for the Compensation Commission and adopted a conclusion establishing guidelines on this subject.

The Council continued its consideration of the request by a number of Governments concerning the late filing of claims of individuals. A subgroup of the Working Group considered samples of personal statements by individual claimants submitted by the Governments of the Islamic Republic of Iran, Pakistan and the Philippines, and reported to the Council. There was no consensus at that time with respect to the requests for Governing Council approval for the filing of late claims, and the Council postponed the matter to the March 2004 session. In the interim, the secretariat is instructed to prepare a further written communication to the Governments of India, the Islamic Republic of Iran, Kuwait, Pakistan, the Philippines, Sri Lanka and the Syrian Arab Republic outlining in further detail the requirements of the "Canadian" criteria (namely, the existence of a war situation or breakdown of civil order and evidence of a prior attempt by the claimant to file the claims within the relevant deadlines) on the basis of how they have been applied previously, including examples. Each Government is requested to further review its proposed late claims in the light of the further information provided by the secretariat and to limit its submission to only those claims that it considers satisfy the Canadian criteria, with the deadline for the delivery of the claims being 31 January 2004. The secretariat will assess the claims submitted on time for potential eligibility under the established Canadian criteria and make recommendations as to their eligibility to a subgroup of the Working Group prior to the March 2004 session of the Governing Council.

The Council considered requests made by the Government of Kuwait with respect to the claims that it will file with the Commission pursuant to Governing Council decision 12, relating to the 605 former detainees in Iraq determined to be dead. With respect to the filing of claims of deceased detainees, the Council requested that the Government of Kuwait should file a single claim for each of the 605 detainees for all losses personally suffered by them.

One of the requests made by Kuwait concerns the amounts of compensation that can be claimed by family members for mental pain and anguish relating to death under section A of Governing Council decision 8. In recognition of the particular mental pain and anguish suffered by the family members of the detainees, because of the fact that they endured prolonged uncertainty about the fate of their loved ones, and being aware that no provision for such mental pain and anguish is made in decision 8, the Council recommended that, in addition to the claims under section A of decision 8, a separate loss element be created for the family members of the detainees. A single claim will be filed under this loss type per family unit, with awards to be distributed in accordance with the domestic laws applicable to the deceased. The Council will continue its discussion concerning the ceiling or the fixed amount of compensation that can be awarded for this type of loss per family unit.

The Council noted that the existing rights of family members of the deceased detainees are not affected, and that family members are entitled to make claims for mental pain and anguish relating to death under section A of decision 8.

In the light of the conclusion reached above with respect to the distribution of mental pain and anguish awards to the family members of the deceased in accordance with the domestic laws applicable to the deceased, the Council did not further address the request of Kuwait for the revision of the definition of "family" as set out in Governing Council decision 3. The Council set the deadline for the filing of all claims referred to above at 31 March 2004.

The Council recommended that claims under categories A, B, C and D that were previously filed with the Compensation Commission by family members of the deceased detainees, which have been suspended or not otherwise resolved, shall be considered by the category D Panel of Commissioners. The Council also recommended that the issue of claims under categories C and D that were not previously filed within the deadlines established by the Governing Council because of a sincerely held belief by the claimant that, because of his or her relationship to a detainee, harmful consequences might result for the detainee if the claim was filed, should remain on the agenda of the Governing Council for further consideration.

The Working Group considered the issue of the deadline for the filing of claims with the Compensation Commission under decision 12 of the Governing Council. The Council decided that the final deadline for the filing of claims under paragraph 1 (a) of decision 12, including claims for injuries resulting from the explosion of landmines and unexploded ordnance, is set at 31 October 2004. The Governing Council will review any such claims received after that date on the basis of the criteria established by the Panel of Commissioners with respect to these claims, until such time as the Commission ceases its activities concerning the processing of claims.

The Council considered and took note of the report of the Executive Secretary on the distribution of payments and transparency and the return of undistributed funds, and requested the secretariat to continue to inform the Council of the reports of Governments and international organizations on the distribution of payments and the return of undistributed funds.

The Council considered the payment of environmental claims and the monitoring of the use of environmental compensation awards and referred these matters to a meeting of the Working Group for its further consideration, and will keep them on its agenda.

The Council discussed two recommendations made by the Board of Auditors. The Council considered the first recommendation, regarding joint inspection missions by the Office of Internal Oversight Services and the Compensation Commission, in the light of information provided by the secretariat on this issue, and referred this issue to the Working Group for further consideration. The Council also further considered the second recommendation regarding the processing fees deducted by Governments, and requested the secretariat to provide information on the data already made available by Governments to the secretariat on the processing fees deducted for the Working Group's further consideration. Both of these recommendations will be kept on the agenda of the Governing Council.

The Council heard a report on the fifteenth meeting of the Committee on Administrative Matters, which was held on 20 November and 16 December 2003, together with informal meetings on 21 and 26 November 2003, to discuss the proposed budget of the Executive Secretary for the biennium 2004-2005. After extensive discussion, in which a number of issues were raised and discussed by the delegates and information was provided by the secretariat, the Committee on Administrative Matters approved by consensus the proposed budget of the Executive Secretary for the biennium 2004-2005 in the amount of $51,706,300. Further detail about the meeting and of the discussions that took place concerning the proposed budget and the other agenda items is contained in the report of the Committee on Administrative Matters to the Governing Council (S/AC.26/2003/R.46), which will be sent with the original of this letter.

Finally, the Governing Council decided to hold its fifty-first session from 9 to 11 March 2004.

To date, the Compensation Commission has awarded compensation of approximately $48 billion, including the awards approved at its fiftieth session, and approximately $18 billion of the amounts awarded has been made available to Governments and international organizations for distribution to successful claimants in all categories of claims. The payments to successful claims approved by the Governing Council at the fiftieth session will be made in the next round of payments, in accordance with Council decision 197, and are scheduled to take place on 22 January 2004. The balance of the Compensation Fund at present is approximately $243 million.

(*Signed*) Michael **Steiner**
President of the Governing Council

Annex I

Summary of recommendations

A. Report and recommendations made by the D1 Panel of Commissioners concerning part one of the nineteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/27)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Egypt	3	5	723 931.90	15 404.38
Germany	-	1	126 510.35	nil
India	7	5	8 362 223.01	338 001.07
Jordan	10	-	4 883 612.36	1 426 418.38
Kuwait	185	30	126 619 384.22	68 595 456.00
Pakistan	1	1	543 947.92	132 120.19
Philippines	1	-	119 721.45	62 477.69
Syrian Arab Republic	1	-	767 128.03	46 238.00
Turkey	-	3	232 100.00	nil
Yemen	59	11	29 708 362.74	8 109 544.69
Total	**267**	**56**	**172 086 921.98**	**78 725 660.40**

B. Report and recommendations made by the Panel of Commissioners concerning the tenth instalment of E1 claims (S/AC.26/2003/28)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	6	1	203 699 176	76 978 482

C. Report and recommendations made by the Panel of Commissioners concerning the fifteenth instalment of E2 claims (S/AC.26/2003/29)

Country or submitting entity	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Austria	-	3	10 047 305	nil
Bahamas	1	-	188 775	86 145
Canada	1	2	4 364 536	866 862
Cyprus	-	1	34 799	nil
Egypt	3	54	82 298 002	31 301
France	-	1	21 039	nil
Germany	14	7	18 844 381	799 756
Greece	-	76	17 236 209	nil
India	1	2	2 154 439	2 497
Iran	-	1	9 621 484	nil
Israel	13	1	3 974 606	2 172 999
Italy	-	3	580 659	nil
Netherlands	1	3	239 777	15 385
Pakistan	1	-	1 031 250	252 950
Republic of Korea	3	2	235 302 294	27 798 480
Saudi Arabia	4	3	22 070 556	723 654
Spain	1	3	3 536 424	1 398
Sweden	1	1	1 468 612	663 042
Switzerland	2	-	218 578	83 059
Syrian Arab Republic	-	1	179 020	nil
Turkey	2	-	19 015	16 390
United Arab Emirates	-	1	1 334 093	nil
United Kingdom	16	6	4 464 687	774 660
United States	10	4	78 333 603	14 353 931
Wong and Sons Trading Co. (claim No. 4002391)	1	-	9 428 595	1 755 364
Total	**75**	**175**	**506 992 738**	**50 397 873**

D. Report and recommendations made by the Panel of Commissioners concerning the twenty-eighth instalment of E3 claims (S/AC.26/2003/30)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Germany	1	-	69 687 357	11 438 332
Italy	1	2	29 186 509	1 277 092
Japan	2	-	11 914 400	3 585 076
Turkey	1	-	30 726 182	19 185 301
United Kingdom	2	2	135 884 583	2 909 120
Total	**7**	**4**	**277 399 031**	**38 394 921**

E. Report and recommendations made by the Panel of Commissioners concerning the third instalment of F4 claims (S/AC.26/2003/31)

Country	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Kuwait	3	-	5 235 325 175	685 381 727
Saudi Arabia	1	1	4 768 894 407	463 319 284
Total	**4**	**1**	**10 004 219 582**	**1 148 701 011**

F. Report and recommendations made by the Panel of Commissioners concerning the first instalment of Palestinian late claims for damages up to $100,000 (category C claims) (S/AC.26/2003/26)

Submitting entity	*Number of claims recommended for payment*	*Number of claims not recommended for payment*	*Amount of compensation claimed (US$)*	*Amount of compensation recommended (US$)*
Palestinian Authority	852	31	40 916 163.81	15 768 453.51

Annex II

Documents before the Compensation Commission at its fiftieth session

1. Report and recommendations made by the D1 Panel of Commissioners concerning part one of the nineteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/2003/27).
2. Decision concerning part one of the nineteenth instalment of individual claims for damages above $100,000 (category D claims) (S/AC.26/Dec.208 (2003)).
3. Report and recommendations made by the Panel of Commissioners concerning the tenth instalment of E1 claims (S/AC.26/2003/28).
4. Decision concerning the tenth instalment of E1 claims (S/AC.26/Dec.209 (2003)).
5. Report and recommendations made by the Panel of Commissioners concerning the fifteenth instalment of E2 claims (S/AC.26/2003/29).
6. Decision concerning the fifteenth instalment of E2 claims (S/AC.26/Dec.210 (2003)).
7. Report and recommendations made by the Panel of Commissioners concerning the twenty-eighth instalment of E3 claims (S/AC.26/2003/30).
8. Decision concerning the twenty-eighth instalment of E3 claims (S/AC.26/Dec.211 (2003)).
9. Report and recommendations made by the Panel of Commissioners concerning the third instalment of F4 claims (S/AC.26/2003/31).
10. Decision concerning the third instalment of F4 claims (S/AC.26/Dec.212 (2003)).
11. Report and recommendations made by the Panel of Commissioners concerning the first instalment of Palestinian late claims for damages up to $100,000 (category C claims) (S/AC.26/2003/26).
12. Decision concerning the first instalment of Palestinian late claims for damages up to $100,000 (category C claims) (S/AC.26/Dec.207 (2003)).
13. Twenty-fourth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2003/32).
14. Decision concerning corrections of awards pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/Dec.213 (2003)).